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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re J.E. et al., Persons Coming Under the Juvenile Court Law.	B267030
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. JAMES E., Defendant and Appellant.	(Los Angeles County Super. Ct. No. DK05828)

APPEAL from orders of the Superior Court of Los Angeles County, Steff R. Padilla, Commissioner. Dismissed.

Robert McLaughlin, under appointment by the Court of Appeal, for Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Stephen D. Watson, Deputy County Counsel, for Respondent.

James E. (Father) appeals jurisdictional orders issued by the juvenile dependency court as to his two daughters. We dismiss Father's appeal because it has been rendered moot by further rulings in the dependency court while the appeal was pending.

FACTS

Background

Father and Angela E. (Mother) are the parents of two children: J.E. (born in 2009) and H.E. (born in 2010). Father and Mother separated in 2011 to 2012, and the children thereafter lived with Mother. Father and Mother shared joint legal custody. There was an unresolved family law case.

In May 2014, the Los Angeles Department of Children and Family Services (DCFS) received a referral alleging general neglect against Father, apparently initiated by Mother. According to an ensuing DCFS filing in the dependency court: "The following was reported: '[Mother] walked into her daughter's room last night and . . . saw [J.E. and H.E.] touching each other's privates . . . . [Mother] said that both girls told her that [Father]'s girlfriend's daughter Lilly taught them how to touch themselves and she also encourages them to touch each other.'"

A DCFS social worker investigated the referral and interviewed a number of involved persons. During Mother's interview, Mother reported that the children lived with her and her boyfriend, Julius G., and his nine-year-old son, J.G., Jr. Regarding the referral, Mother stated that J.E. had started putting her hands down her pants to play with herself and said that Lilly taught her how to do so. Further, Mother stated that J.E. and H.E. had told Mother that Lilly had touched both of them. Mother denied that Julius G. had ever sexually abused the girls, and said that the girls did not sleep in the same room as J.G., Jr.

The social worker also interviewed the girls. J.E. reported: "When I go to my daddy's [house,] he tells me to touch myself and doesn't stop [me]." She then pointed to her vaginal area and said, "My daddy has never touched me, just Lilly." H.E. reported: "My daddy watched me touch myself and he didn't tell me to stop." She also said that she saw Lilly running her fingers around J.E.'s private parts once when Lilly and Julie

were sleeping over. When the social worker asked H.E. if Lilly had ever touched her, H.E. answered: "She touched my private parts by tapping it hard." Further, H.E. stated that Father had touched her with his hand in her private area. H.E. denied being touched by Julie, Julius G., or J.G., Jr.

The social worker arranged for J.E. and H.E. to undergo forensic examinations. During their examinations, the children told medical staff that Lilly touched them "down there," but examiners found no evidence of sexual assault.

When interviewed by the social worker, Julius G. said that he began noticing the girls would act out after visits with Father a short while after Father started dating Julie. Julius G. told the social worker that he used to allow all of the children to sleep in a tent on the weekends, but he stopped that because he once found J.G., Jr. on top of J.E. in the tent.

J.G., Jr., denied touching the girls or seeing anyone touch them. He openly admitted the incident in the tent with J.E., but said it was a one-time event and it never happened again. He had seen the girls put their hands down their pants.

Father told the social worker that he (Father) and Julie were no longer together, and neither she nor Lilly had any contact with J.E. or H.E. since February. He claimed the girls did not have much contact with Lilly while she and Julie had been in the family home, and said that the girls had been touching themselves since before Lilly was around. Father said that everything seemed fine until the girls said something about Lilly shortly before the social worker's investigation. Father denied that he watched the girls touch themselves, but admitted that he had seen both girls "do that." He stated that he did not encourage that type of behavior and attributed it to them being young and learning about their bodies.

When asked if he had any idea why the girls would say that he had touched them, Father recalled an incident where the girls and Julius G. were at his house, and J.E. said that Father was touching her. Father said that his response to J.E. was "like 'wow!'" and that he and Julius G. had asked J.E. if she was lying. Father said he could not remember what J.E.'s response was, but added that while he and Julius G. were talking to J.E. about

what she had said, H.E. blurted out that "Me Maw" (the children's paternal grandmother) was touching her, which shocked him and Julius G. Father denied that the girls had ever said anything to him about Julius G. or J.G., Jr., touching them.

The girls' paternal grandmother told the social worker that neither girl had ever reported sexual abuse or acted out sexually, or touched themselves around her. Julie and Lilly denied all allegations of sexual touching.

The Dependency Proceedings

In July 2014, DCFS filed a section 300 petition[1] on behalf of J.E. and H.E. The petition originally alleged that Father had sexually abused the girls and that Mother had failed to protect them. As subsequently amended and sustained, the petition alleged the following conduct and or omissions as to the parents pursuant to section 300, subdivisions (b) [failure to protect]:

> "b-1. On prior occasions in 2014, [J.E. and H.E.] were sexually abused by unrelated children. [Father and Mother] knew of the sexual abuse of [J.E. and H.E.] by the unrelated children and failed to protect [J.E. and H.E.] in that [Father and Mother] allowed the unrelated children to have unlimited access to [J.E. and H.E.]. The sexual abuse of [J.E. and H.E.] by the unrelated children and [Father's and Mother's] failure to protect [J.E. and H.E.] endangers [their] physical health and safety and places [them] at risk of physical harm, damage, danger, sex abuse and failure to protect.
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> "b-6. As a result of the parental conflict the parents were not able to properly protect the girls."

The dependency court detained the children, released them to Mother, and granted Father monitored visits. The court ordered family maintenance services.

Over a number of hearing dates from August to December 2014, the dependency court conducted the jurisdiction hearing. At a hearing in December 2014, Barry Hirsch, a

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[1] All section references are to the Welfare and Institutions Code.

forensic psychologist, testified. Dr. Hirsch offered his opinion—based on his review of DCFS's reports—that it "seems clear" that Lilly "probably played genital masturbation kinds of games with [H.E. and J.E]. And that was the clear starting point." Further, Dr. Hirsch opined that H.E. and J.E. were likely exposed to sexualized behaviors and inappropriate sexual touching in both Mother's and Father's homes. In questioning by the court, Dr. Hirsch clarified that he did not have an opinion that J.E. or H.E. "were actually sexually molested by [Father]," and that he did not have an opinion that J.E. or H.E. "were sexually molested by anybody." At the end of the court's inquiry, the following exchange occurred:

> "[THE COURT]: And I think . . . you said that upon your review of all of the material, the clearest story—or the most probable explanation, at least, is that [J.E. and H.E.] were inappropriately touched by Lilly and also by [J.G., Jr.]?"
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> "[DR. HIRSCH]: Right."

On December 19, 2014, the dependency court pronounced its jurisdictional findings: "I cannot find by a preponderance of the evidence that [Father] sexually abused these girls . . . . [¶] What I do find true, because the adults witnessed it and testified to it, is that Lilly, an unrelated child, and [J.G., Jr.], an unrelated child, sexually abused these children. [¶] What the court finds is that these girls were inappropriately touched by unrelated children. . . . [¶] The resulting parental conflict by the parents—they were not able and are not able to properly protect these girls. And that's both Mother and Father. [¶] Any, and all, allegations as to Father sexually touching these children are absolutely dismissed. . . ."

The dependency court ordered the children placed with Mother, and granted Father unmonitored visits.

In January 2015, DCFS filed a section 342 petition after Mother disclosed that H.E. and J.E. had come home from a visit alleging they were sexually abused by Father, the paternal grandmother, and a paternal uncle.

The dependency court adjudicated the section 342 petition during a course of hearings over the ensuing months. During these hearings, the court heard testimony from the children, Mother, Father, the paternal grandmother, and Julius G. On June 2, 2015, the court dismissed the section 342 petition, stating:

> "I don't believe these children were sexually abused by their Father. I didn't believe it the first time. . . . This is a situation where someone is telling these girls that their father, their grandmother, their uncle and their aunt, and the father's girlfriend and the father's girlfriend's daughter are all sexually abusing them. [¶] So what I thought the first time was that it was [Julius G.] and his son that were sexually abusing these girls or inappropriately touching these girls. And in order to have [Julius G.] remain in their house, they're claiming their Father did it. [¶] I'm dismissing this entire [section] 342 petition and this entire petition is hereby dismissed."

The dependency court ordered the children to remain with Mother, and granted unmonitored visits for Father. The court prohibited contact between the children and Julius G., and continued the matter for the disposition hearing.

In June 2015, Father filed a section 388 petition requesting the dependency court to dismiss its December 19, 2014 finding that Father failed to protect the children from being sexually abused by unrelated children. Father's section 388 petition alleged there was new information in that the results of the section 342 petition which had been filed by Mother, including the testimony in relation to the section 342 petition, showed that Father had not failed to protect his daughters.

On July 28, 2015, the dependency court conducted the disposition hearing. At that time, the court dismissed Father's section 388 petition after agreeing with an argument by DCFS's counsel that a section 388 petition was not a proper procedural vehicle to present a challenge to the court's earlier findings regarding Father's failure to protect. However, in dismissing Father's section 388 petition, the court once again stressed that it had never found that Father had abused his children. As the court stated:

"I'm concerned that the people, members of Mother's family don't believe that I made a finding as to [Father]. I did make a finding; I believe these children were molested, I just don't think it's [Father]. . . . I just don't think [Father] did it, or any member of his family. . . . I'm being very clear. I've made specific findings, not once, but two times in this. Father is not the perpetrator of sexual abuse, nor members of his family."

The dependency court declared J.E. and H.E. to be dependents of the court, made a home-of-parents order, and continued the matter for further review hearings.

In August 2015, Father filed a notice of appeal.

On June 3, 2016, the juvenile court found the conditions justifying the initial assumption of jurisdiction no longer existed, entered a juvenile custody order granting Mother and Father joint legal and joint physical custody of J.E. and H.E., and terminated jurisdiction.

DISCUSSION

DCFS contends we should dismiss Father's appeal as moot. DCFS argues dismissal of Father's appeal is proper because the dependency court terminated its jurisdiction with exit orders granting Father and Mother joint legal and physical custody of J.E. and H.E. while Father's appeal was pending. We agree that Father's appeal should be dismissed.

Our decision to dismiss Father's instant appeal is guided by *In re N.S.* (2016) 245 Cal.App.4th 53 (*N.S.*), review denied May 11, 2016 (S233514). As explained in *N.S.*, an appellate court generally will dismiss an appeal as moot when events occur during the appeal that renders it impossible for the court to grant effective relief. (*Id*. at pp. 58-61, discussing *In re Michelle M.* (1992) 8 Cal.App.4th 326, 328-330, and *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1546-1548 (*Joshua C.*).)

Here, "no effective relief can be granted." (*N.S.*, *supra*, 245 Cal.App.4th at p. 61.) Father has been awarded joint legal and physical custody of J.E. and H.E, the family has been restored to its structure and living arrangements as existed before the intervention of the dependency court, "and the jurisdictional findings are not the basis of any current

order that is adverse to [him]." (*Ibid*.) "[T]here is no relief to provide [Father] . . . in [his] appeal from the jurisdictional findings . . . ." (*Ibid*.)

Father argues we should address his challenge to the sufficiency of the evidence in support of the dependency court's jurisdiction findings for the following reason: "If Father is deemed a non-offending parent [through a successful appeal], his prospects for securing placement and potentially custody of the girls—in the event they are removed from Mother's custody [in a future legal proceeding]—would be greatly enhanced." Here, Father cites section 361.2 and *In re Quentin H*. (2014) 230 Cal.App.4th 608, 613. Father conversely argues: "[I]f the juvenile court's jurisdictional finding is allowed to stand, Father's chances of gaining custody of [J.E. and H.E.] either in . . . a subsequent dependency proceeding or a future family law custody contest would be significantly diminished." Father cites *In re D.C*. (2011) 195 Cal.App.4th 1010, 1015; and *In re Drake M*. (2012) 211 Cal.App.4th 754, 763, to support his position.

N.S. addressed the issue of parents' concerns about potential future effects from unreviewed jurisdictional orders: The *N.S*. court noted the appellant mother's reliance on *Joshua C.*, *supra*, 24 Cal.App.4th 1544, in arguing for review of jurisdictional findings because, otherwise, " possibly erroneous findings will . . . be left unexamined." (*N.S., supra*, 245 Cal.App.4th at p. 61.) The *N.S*. court found this reliance to be "misplaced" in examining the issue of mootness and we agree. As *N.S*. correctly noted, while the *Joshua C*. court had expressed its concern about the undesirability of "'insulating erroneous or arbitrary rulings from review'" (*N.S., supra*, 245 Cal.App.4th at p. 61, quoting *Joshua C. supra*, 24 Cal.App.4th at p. 1548), the linchpin for the *Joshua C*. court's decision to review the jurisdictional findings there was that those findings were "the foundation for visitation-and-custody orders that remained in effect." (*N.S., supra*, 245 Cal.App.4th at p. 61.)

N.S. noted that some courts had relied on *Joshua C*. in declining to dismiss appeals even though the appealing parents made no showing that jurisdictional orders continued to affect them adversely, but rejected such cases for the following reasons, with which we agree: "We see no reason to review the juvenile court's jurisdictional findings

here on the basis of . . . speculation or caution [about possible future effects of those findings]. . . . [¶] . . . [E]ven if we were to conclude that the juvenile court's jurisdictional findings erroneously resolved a close call, there remains no effective relief we could give [Father] beyond that which [he] has already obtained. We are mindful that parents of young children face the prospect of possible future juvenile court intervention. . . . We are unconvinced, however, that any ruling we could issue here would have any practical effect on future dependency proceedings. . . . Because [Father] has not shown any adverse effect from the jurisdictional findings, we decline to exercise our discretion to review them." (*N.S.*, *supra*, 245 Cal.App.4th at p. 62.)

Finally, we reject Father's suggestion that he is suffering an adverse effect from the dependency court's jurisdictional findings because they underpin the element of the court's exit order stating that J.E.'s and H.E.'s "primary residence" will be with Mother. As we understand the record, this is the same living arrangement situation that the family was in prior to the dependency court's initial decision to exercise jurisdiction over the children. Father and Mother have been granted joint legal and physical custody of the children, and we see no adverse consequence from the recognition that the children will live with Mother as their primary residence, as they did before dependency jurisdiction.

DISPOSITION

Father's appeal from the dependency court's jurisdiction orders is dismissed.

BIGELOW, P.J.

We concur:

FLIER, J.

GRIMES, J.